April 11, 2008

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Faye Vlieger

Date of Filing: March 13, 2008

Case Number: TFA-0250

On March 13, 2008, Faye Vlieger (Appellant) filed an appeal from a determination issued to her on February 4, 2008, by the Department of Energy's (DOE) Richland Operations Office (Richland). In that determination, Richland responded to a request for documents that the Appellant submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. Richland identified a number of documents responsive to the Appellant's request. Some of those documents were released in their entirety, but some information was withheld from one document pursuant to Exemption 6. Additionally, Richland identified possible responsive documents that were owned by various subcontractors and thus not subject to release under FOIA. With regard to the Appellant's request for other documents, Richland stated that, because of the cost of the search, it would require the Appellant to agree beforehand to pay for the cost of the search. Richland also denied the Appellant's request for a fee waiver with regard to her FOIA request. The Appellant has challenged the withholding of information under Exemption 6, the adequacy of the search that was conducted for responsive documents, and the denial of her request for a fee waiver. This appeal, if granted, would require Richland to release the withheld information in one document, conduct additional searches for documents, and grant the Appellant a fee waiver for all costs associated with her FOIA request.

I. Background

The Appellant requested information related to a 2002 industrial incident in the 272-AW building at the DOE's Richland facility, in which she and several employees may have been exposed to a chemical. The facility was operated for the DOE by CH2M Hill Hanford Group, Inc. (CHG). She first sought information from the Employee Concerns office of DOE's Office of River Protection (EC-ORP) on September 25, 2007. See Appendix A (list of 15 categories of documents requested from the Employee Concerns office). Among the documents the Appellant requested were copies of the Documentation References (Documentation References) listed on

page 25 of the report for Employee Concern 2002-0044 which details the specific incident.[1] This request was not made pursuant to the FOIA.[2] EC-ORP subsequently provided a number of the Documentation References in their entirety. Additionally, a number of the Documentation References were not provided.

While this request was still being processed by EC-ORP, the Appellant received a December 7, 2007, E-mail from Dorothy Riehle (Riehle), FOIA Officer at Richland. The E-mail informed the Appellant that her initial request to EC-ORP had been forwarded to her office so that it could be processed pursuant to the FOIA. During the pendency of Richland's processing of her FOIA request, the Appellant requested that she be granted a fee waiver for costs associated with her request.

On February 4, 2008, Richland provided a determination letter regarding the Appellant's FOIA request. Richland's determination regarding the 15 categories of documents is summarized below:

Category No. and Description	**Richland Determination**
Category 1 – Documentation References listed on page 25 of the Employee Concern 2002-0044 report	EC-ORP previously provided Documentation Reference Nos. 1, 2, 6, 7, 8, 9, 10, 11, 13-14, 16-21, 33, 34 and 36. Documentation Reference Nos. 3-5, 12, 22-32, 35, 37-40 are CHG-owned records and not subject to FOIA.
Category 2 - Technical review records and documents from Joe Elizaguirre	No responsive records found.
Category 3 – Investigation documents created by Marc Andersch, Rob Dunn, Carter Kirk, and Ron Legg	Investigation documents are CHG records and thus are not subject to FOIA. Several E-mail messages from named individuals were provided.
Category 4 - CHG records created by Gary Smith as part of the DOE directed investigation into chemical exposure on June 13, 2002	Investigation documents are CHG records and thus are not subject to FOIA. Search of DOE offices revealed no responsive documents.
Category 5 - Documents created from 7B100-02-PKA-025 Notification of Industrial Hygiene Monitoring Results Survey Number 02-2147, 11 7-02	One document was previously provided by EC-ORP. A search for responsive documents (because there is no electronic searchable database) would require 25-50 hours of search time at $35.91 per hour. Richland asks for an assurance of payment before undertaking search.

[1] The Documentation References consist of a number of reports and documents relating to the 2002 incident along with a number of witness statements. We note that the names of the witnesses were deleted on page 25 of the report.
[2] Even though the bottom of page 25 was marked "(b6,b7 & k2)," suggesting deletions under the FOIA, EC-ORP did not make any deletions to the copy of the document it provided to the Appellant. This document was not provided to the Appellant under the FOIA or the Privacy Act and we offer no opinion as to the propriety of this withholding. If the Appellant wishes to challenge this withholding, she should make a request for this document to Richland pursuant to the FOIA.

Category 6 - Reports and records from Sample Number W021001747, Rag "L" and blank bag samples	Search Time costs estimated to be one hour at $35.91 per hour. Richland asks for an assurance of payment before undertaking search.
Category 7 - Reports and records generated from the samples collected with the Organic Vapor Monitoring instrument used on June 13, 2002 in building 272 AW.	A copy of one document (Event Report) was provided to the Appellant under Privacy Act at no cost. Because there is no database or system which identifies documents created from the samples, Richland estimates that the search would require 25 to 50 hours at $35.91 per hour. Richland asks for an assurance of payment before undertaking search.
Category 8 - The complete files with all attachments and reports for PER 2002-3252, and PER 2002-4536[3]	PER 2002-3252 and PER 2002-4536 reports were provided to the Appellant by EC-ORP. No additional documents were found.
Category 9 - The OSHA logs and Computerized Accident and Injury Reporting System (CAIRS) reports from June 13, 2002 to the present for the incident.	OSHA logs were provided to the Appellant under Privacy Act at no cost. A two-page report was located and provided to the Appellant. Richland redacted the names of employees in the report pursuant to Exemption 6.
Category 10 - The DOE, HEHF (Hanford Environmental Health Foundation aka Advance Med), and CHG Case Management Records that have been created since the first reporting of the incident on June 13, 2002. (Also may be known as or will include Health Advocate files.)	All responsive documents in possession of Advance MedHanford, Inc. (aka Advance Med) were provided to the Appellant pursuant to Privacy Act. No other responsive documents were found.
Category 11 - DST (Double Shell Tank Farm) Operations Daily Release Sheet for the period June 12-14, 2002, for all and any work in and around building 272 AW and the adjacent tank farms	EC-ORP provided one document, the DST release Sheet for June 13, 2002. To search for other documents would require 8 to 16 hours of search at $35.91 per hour. Richland asks for an assurance of payment before undertaking search.
Category 12 - DOE, HEHF (Hanford Environmental Health Foundation aka Advance Med), and CHG files for Incident File Number 3362	Richland provided the Appellant with a copy of the entire OSHA file. However, other potentially responsive documents were found to be owned by CHG and thus were not subject to release under the FOIA.

[3] PER as an acronym for "Problem Evaluation Request." Memorandum of Telephone Conversation between Dorothy Riehle, FOIA Officer, Richard and Richard Cronin, Assistant Director, Office of Hearings and Appeals (March 31, 2008).

Category 13 - Air Modeling reports for the HVAC system for building 272 AW for the periods before and after the date of the incident, June 13, 2002.	Richland estimates that the search would require 10 to 20 hours at $35.91 per hour. Richland asks for an assurance of payment before undertaking search.
Category 14 - The HSS-ROV Log and HSS-ROV files, with distribution lists	Richland provided the Appellant with responsive documents pursuant to the Privacy Act at no cost.
Category 15 - The CHG Hill Causation Analysis Report (CAR) for the incident, AKA Root Cause Analysis	Richland provided the Appellant with responsive documents (under the response to Category 8) pursuant to the Privacy Act at no cost.

For the purpose of calculating fees to be charged with the processing of her FOIA Request, Richland determined that she fell in the "other requestor" category as defined in 10 C.F.R. § 1004.9(b). The Richland February 4 2008, determination letter also addressed the Appellant's request for a fee waiver under the FOIA. After considering the regulatory factors to be considered for a fee waiver (as listed in 10 C.F.R. § 1004.8(a)(8)), Richland denied the fee waiver request on the grounds that the subject matter of the requested information would not significantly add to the public understanding of the DOE's Richland facility and its operations. Additionally, Richland found that there was no evidence indicating that the Appellant would be able to disseminate the information to the public. *See* February 4, 2008, Determination Letter from Dorothy Riehle, FOIA Officer, Richland, to Appellant, at 3.

In her appeal, the Appellant challenges Richland's determination on a number of grounds. She takes issue with Richland's classification of her for fee purposes as well as its denial of her request for a fee waiver. She also takes issue with Richland's determination that a number of potentially responsive documents are exempt from the FOIA because they belong to CHG. The Appellant also challenges the extent of the search that was conducted for responsive documents.[4]

II. Analysis

1. Fee Categorization and Waiver

A. Fee Categorization

The FOIA generally requires that requesters pay fees associated with processing their requests. 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). The DOE regulations implementing the FOIA delineates three types of costs – "search costs," "duplication costs," and "review costs" – and outlines four categories of requesters, "commercial use requesters," "educational and non-commercial scientific institution requesters," "requesters who are representatives of the news media," and "all other requesters." 10 C.F.R. § 1004.9(b). The regulations specify the costs each category of requesters must pay. If a requester wants the information for a "commercial use," it

[4] The Appellant also asserts that a number of the documents should be provided to her at no cost pursuant to two employee safety regulations, 29 C.F.R. § 1910 *et seq.* and 10 C.F.R. § 851 *et seq.* We have no jurisdiction under these regulations to mandate release of documents.

must pay for all three types of costs incurred. In contrast, educational institutions and the news media are required to pay only duplication costs, and all other requesters are required to pay search and duplication costs, but not review costs. 5 U.S.C. § 552(a)(4)(A)(ii); 10 C.F.R. § 1004.9(b).

For purposes of the calculation of fees, Richland placed the Appellant in the category of "all other requesters." *See* Electronic Mail from Dorothy Riehle to Appellant (December 6, 2007). Given the nature of the information requested, information regarding an industrial incident she may have been involved with, it does not appear that the Appellant's purpose in requesting the information was commercial. Additionally, there is no evidence before us that indicates that the Appellant's request was made on behalf of a representative of the news media or on behalf of an educational and non-commercial scientific institution. Consequently, we find that Richland properly classified the Appellant in the "all other requester" category for purposes of calculating fees for processing her FOIA request.

B. Fee Waiver

The FOIA provides for a reduction or waiver of fees only if a requester satisfies his burden of showing that disclosure of the information (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 10 C.F.R. §1004.9(a)(8). In analyzing the public-interest prong of the two-prong test, the regulations set forth the following factors the agency must consider in determining whether the disclosure of the information is likely to contribute significantly to public understanding of government operations or activities:

> (A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government" (Factor A);
> (B) The informative value of the information to be disclosed: Whether disclosure is "likely to contribute" to an understanding of government operations or activities (Factor B);
> (C) The contribution to an understanding by the general public of the subject likely to result from disclosure (Factor C); and
> (D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities (Factor D).

10 C.F.R. § 1004.9(a)(8)(i). As noted above, in Section II.1.A, the information is not primarily in the commercial interest of the Appellant. 10 C.F.R. § 1004.9(a)(8)(ii).

i. Factor A

Factor A requires that the requested documents concern the "operations or activities of the government." *See Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 109 S. Ct. 1468, 1481-1483 (1989); *U.A. Plumbers and Pipefitters Local 36*, 24 DOE ¶ 80,148 at 80,621 (1994). In the present case, it is undisputed that the requested information – concerning an

industrial incident at a DOE facility in Hanford – concerns activities or operations of the government. Therefore, we find that the Appellant's request satisfies Factor A.

ii. Factor B

Under Factor B, disclosure of the requested information must be likely to contribute to the public's understanding of specifically identifiable government operations or activities, i.e., the records must be meaningfully informative in relation to the subject matter of the request. *See Carney v. Dep't of Justice*, 19 F.3d 807, 814 (2d Cir. 1994). This factor focuses on whether the information is already in the public domain or otherwise common knowledge among the general public. *See Roderick Ott*, 26 DOE ¶ 80,187 (1997); *Seehuus Associates*, 23 DOE ¶ 80,180 (1994) ("If the information is already publicly available, release to the requester would not contribute to public understanding and a fee waiver may not be appropriate."). In the present case, the vast majority of the requested information does not appear to be publicly available. Therefore, we find that the Appellant has satisfied Factor B.

iii. Factor C

Factor C requires that the requested documents contribute to the general public's understanding of the subject matter. Disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the individual requester or of a narrow segment of interested persons. *Schrecker v. Dep't of Justice*, 970 F. Supp. 49, 50 (D.D.C. 1997). Thus, the requester must have the intention and ability to disseminate the requested information to the public. *Ott*, 26 DOE at 80,780; *see also Tod N. Rockefeller*, 27 DOE ¶ 80,184 (1999); *James L. Schwab*, 22 DOE ¶ 80,133 (1992). In the present case, Richland determined that the Appellant did not establish her ability to disseminate the information.

After examining the E-mail communications between Richland and the Appellant during the processing of the Appellant's request, as well as the Appellant's appeal submission, we find that the Appellant has not submitted any evidence of her ability to disseminate the requested information to the public. Consequently, we find that the Appellant has not satisfied Factor C.

iv. Factor D

Under Factor D, the requested documents must contribute significantly to the public understanding of the operations and activities of the government. "To warrant a fee waiver or reduction of fees, the public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent." *Ott*, 26 DOE at 80,780 (quoting *1995 Justice Department Guide to the Freedom of Information Act at* 381 (1995)).

In the present case, it remains unclear to what extent the public's understanding is likely to be enhanced by the disclosure of the information. However, we need not reach the issue because the inability to disseminate the information to the public is, in itself, a sufficient basis for denying a fee waiver request. *See Donald R. Patterson*, 27 DOE ¶ 80,267 at 80,927 (2000) (*citing Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988)). Therefore, we find that Richland properly denied the Appellant a fee waiver.

2. Richland's Agency Record Determination

With regard to a number of categories of documents requested by the Appellant, Richland determined that potentially responsive documents were not agency records but instead were owned by CHG and thus were not subject to the FOIA.

The statutory language of the FOIA does not define the essential attributes of "agency records," but merely lists examples of the types of information agencies must make available to the public. *See* 5 U.S.C. § 552(a). In interpreting this phrase, we have applied a two-step analysis fashioned by the courts for determining whether documents created by non-federal organizations, such as CHG, are subject to the FOIA. *See, e.g., BMF Enterprises*, 21 DOE ¶ 80,127 (1991); *William Albert Hewgley*, 19 DOE ¶ 80,120 (1989); *Judith M. Gibbs*, 16 DOE ¶ 80,133 (1987) (*Gibbs*). That analysis involves a determination (i) whether the organization is an "agency" for purposes of the FOIA and, if not, (ii) whether the requested material is nonetheless an "agency record." *See Gibbs*, 16 DOE at 80,595-96.

The FOIA defines the term "agency" to include any "executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch . . . , or any independent regulatory agency." 5 U.S.C. § 552(f). The courts have identified certain factors to consider in determining whether we should regard an entity as an agency for purposes of federal law. In *United States v. Orleans*, 425 U.S. 807 (1976) (*Orleans*), a case that involved a statute other than the FOIA, the Supreme Court defined the conditions under which a private organization must be considered a federal agency as follows: "[T]he question here is not whether the . . . agency receives federal money and must comply with federal standards and regulations, but whether its day-to-day operations are supervised by the Federal Government." *Orleans 425 U.S.* at 815. In other words, an organization will be considered a federal agency only where its structure and daily operations are subject to substantial federal control. *See Ciba-Geigy Corp. v. Matthews*, 428 F. Supp. 523, 528 (S.D.N.Y. 1977). Subsequently, the Supreme Court ruled that the *Orleans* standard provides the appropriate basis for ascertaining whether an organization is an "agency" in the context of a FOIA request for "agency records." *Forsham v. Harris*, 445 U.S. 169, 180 (1980) *(Forsham*). *See also Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 248 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963 (1975) (degree of independent governmental decision-making authority considered); *Rocap v. Indiek*, 539 F.2d 174 (D.C. Cir. 1976).

CHG is a privately owned and operated company. While the DOE exercises general control over the contract work performed by CHG, it does not supervise the company's day-to-day operations. *See* Contract No. DE-AC27-99RL14047, clause C.2. We therefore conclude that CHG is not an "agency" subject to the FOIA. *Radian International*, 26 DOE ¶ 80,126 (1996).

Although CHG is not an agency for the purposes of the FOIA, the requested documents could be considered "agency records" if the DOE obtained them and they were within the DOE's control at the time the Appellant made her FOIA request. *Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989) (*Tax Analysts*); *see Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980); *Forsham*, 445 U.S. at 182. In this case, we have determined that none of the documents the Appellant sought were in the agency's possession or control at the time of her

request. *See* Memorandum of Telephone Conversation between Dorothy Riehle, FOIA Officer, Richland, and Richard Cronin, Assistant Director, OHA (April 2, 2008). Based on these facts, these documents clearly do not qualify as "agency records" under the test set forth by the federal courts. *See Tax Analysts*, 492 U.S. at 145-46; *see also Forsham*, 445 U.S. at 185-86.

Even if contractor-acquired or contractor-generated records fail to qualify as "agency records," they may still be subject to release if the contract between DOE and that contractor provides that the document in question is the property of the agency. The DOE regulations provide that "[w]hen a contract with the DOE provides that any records acquired or generated by the contractor in its performance of the contract shall be the property of the Government, the DOE will make available to the public such records that are in the possession of the Government or the contractor, unless the records are exempt from public disclosure under 5 U.S.C. § 552(b)." 10 C.F.R. 1004.3(e)(1). We therefore next look to the contract between DOE and CHG to determine the status of the requested records. That contract generally provides that records acquired or generated by CHG in its performance of the contract are deemed property of the government. Contract No. DE-AC27-99RL14047, clause I.109(a). However, the contract also defines documents which are deemed to be contractor-owned:

> (b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.
>
> (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
>
> . . . .
>
> (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges;

Contract No. DE-AC27-99RL14047, clause I.109(b).

The potentially responsive records at issue in this appeal concern an incident which involved a potential exposure of a chemical to several employees including the Appellant. Richland identified potentially responsive documents that were owned by CHG with regard to request categories 1, 3, 4 and 12. The identified documents in category 1, which Richland found to be CHG-owned, consist of reports by the CHG Employee Concerns concerning the incident and witness statements about the incident. As such they are records relating to an employee concern that was raised about the incident. Many of these potentially responsive documents are located in the CHG's employee concerns files or files at CHG's Office of the Chief Counsel that were collected in anticipation of potential litigation concerning the Appellant's claim for worker's

compensation (arising from injuries from the incident). As such, these records are CHG-owned and not subject to the FOIA. With regard to the documents requested in Category 3 and 4, any responsive documents would consist of investigatory reports from various CHG Employee Concerns in regard to the incident. Since these would be records related to an employee concern, they, too, would be CHG property and exempt from disclosure under the FOIA. With regard to Category 12, the requested files also relate to an employee concern investigation regarding the incident and, as such, would be CHG property and not subject to the FOIA.

3. Adequacy of the Search

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 11384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See*, *e.g*., *Glen Milner*, 17 DOE ¶ 80,102 (1988).

The Appellant challenged the adequacy of the search conducted for documents in a number of categories. A summary of the searches that were conducted for each category of documents in which the adequacy of the search can be challenged is presented below. [5]

A. Category 2

This category comprises documents related to technical review records and documents originating from Joe Elizaguirre (Elizaguirre). In its search for documents, Richland discovered that Elizaguirre no longer worked for the Department of Energy. However, Richland conducted a search of the office where he used to work (Richland Operation Office's Office of Safety, Health and Quality) for responsive documents. Richland also had searches performed at Richland's Special Concerns Office, then CHG's Safety and Health Office. Richland searched all of the offices it thought most likely to possess responsive documents and found none.

B. Category 3

Richland provided the Appellant all documents responsive to Category 3 that were in the possession of DOE. Richland discovered that of the four named employees in Category 3, Marc Andersch, Carter Kirk, and Ron Legg were no longer employed at CHG. The office of the remaining employee was searched including an electronic search of his Electronic mail. Richland informed us that any documents these employees might have generated would have been filed in the Appellant's CHG employment, employee concerns or worker's compensation files and, as such, would be property of CHG and not DOE.

[5] As referenced above, Richland did not conduct a search in all requested categories since it did not receive assurance from the Appellant that she was willing to pay the costs associated with a search for documents in those categories.

C. Category 4

Richland searched the Richland Special Concerns office where Gary Smith (Smith) was employed. Richland informed us that any document that Smith might have created would have been filed in the CHG Employee Concerns file and would thus be a CHG-owned document. In addition, Richland also searched the CHG's Office of Chief Counsel for documents but none were found.

D. Category 8

Richland provided the Appellant the files for PER 2002-3252 and PER 2002-4536. Additionally, Richland searched the CHG legal office and the CHG quality assurance office but no additional documents were found.

E. Category 9

Richland informed us that OSHA logs are maintained and filed in an employee's OSHA file by the CHG Safety and Health Office. The entire OSHA file was provided to the Appellant. Richland also sought responsive documents from the Computerized Accident and Injury Reporting System (CAIRS), operated by the DOE's Environmental Safety and Quality office. The administrator of the CAIRS system found one responsive document, a CAIRS database report (CAIRS Report) and the report was provided to the Appellant after redactions were made by Richland pursuant to Exemption 6 of the FOIA.

F. Category 10

Richland conducted a search of the DOE's Environmental Safety and Quality Office, the Richland Special Concerns Office, CHG's Safety and Health Office, and CHG's Legal Office, but no responsive documents were found. Richland then conducted a search of Advanced Med's Medical Records Office and Safety Office and all responsive documents were provided to the Appellant.

G. Category 12

Richland discovered that many of the potentially responsive documents for this category would be located in the Appellant's workers compensation, employee concerns or legal files pertaining to a claim for worker's compensation filed by the Appellant. Consequently, Richland concluded these files are CHG-owned and not subject to the FOIA. Other potentially responsive documents were located in the Appellant's OSHA file maintained by CHG and medical files at Advance Med. These documents were provided to the Appellant.

H. Category 14

Richland believed that the most likely locations for responsive documents were the OSHA file maintained by CHG and the files of Advance Med. Both locations were searched and all responsive documents were provided.

I. Category 15

Richland conducted a search of the offices most likely to possess responsive documents – the CHG legal office, the CHG Quality Assurance office and the CHG Safety and Health office. Other than the documents provided in response to Category 8, no responsive documents were found.

In reviewing the search that was made for document in each of the categories above, we find that Richland conducted an adequate search for responsive documents. In each case, Richland conducted a search of the offices where responsive documents were most likely to be found concerning records related to the incident or the Appellant. As discussed above, to the extent that a number of these potentially responsive documents are located in CHG's employee concerns files or CHG's legal files collected in anticipation of potential litigation concerning a claim for worker's compensation filed by the Appellant, such files are owned by CHG and are not subject to the FOIA. In sum, we believe that Richland conducted searches reasonably calculated to discover responsive documents and thus performed adequate searches pursuant to the FOIA.

4. Exemption 6

One of the documents provided to the Appellant, the CAIRS Report, had information withheld pursuant to Exemption 6. The Appellant challenges the propriety of this deletion.

Exemption 6 shields from disclosure "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); 10 C.F.R.§ 1004.10(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

In order to determine whether a record may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether or not a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to this exemption. *Ripskis v. Dep't of Hous. and Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, if privacy interests exist, the agency must determine whether or not release of the document would further the public interest by shedding light on the operations and activities of the Government. *See Reporters Committee for Freedom of the Press v. Dep't of Justice*, 489 U.S. 769, 773 (1989) (*Reporters Committee*). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether release of the record would constitute a clearly unwarranted invasion of personal privacy. *See generally Ripskis*, 746 F.2d at 3.

We have reviewed an unredacted copy of the CAIRS Report. The Report is a database chart listing of accidents. One column of the Report, titled "Name/Description," was withheld in its entirety, except for the entry for the Appellant. This column consists of names of employees who have suffered injury or illness at the Richland facility. Applying the Exemption 6 analysis described above, we find that the employees have a significant privacy interest in not being associated with injuries or illness resulting from on-the-job accidents. The release of such information could be potentially embarrassing to the employees involved.

Having found a significant privacy interest in the redacted material, we now must determine if release of the employee names would further the public interest by shedding light on the operations and activities of the government. The release of the actual names of the employees who have suffered on-the-job accidents and have had injuries or illness result tells us little or nothing in itself about the activities at the DOE facility at Richland. Given the significant privacy interest in the names of the withheld employees with the, at best, *de minimus* public interest in release of the names of the employees, we find that Exemption 6 was properly applied to withhold the names of the employees in the CAIRS Report.

III. Summary

We find that Richland properly classified the Appellant for the purposes of assessing fees for the processing of her FOIA request and that Richland properly determined that she was not eligible for a waiver of fees. We also find that Richland's search for responsive documents was adequate and that Richland properly declined to apply the FOIA to records owned by CHG. Lastly we find that Richland properly applied Exemption 6 to the CAIRS Report. Consequently, the Appellant's appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on March 13, 2008, by Faye Vlieger, OHA Case No. TFA-0250, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 11, 2008